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April 14, 2005

**VIA HAND DELIVERY**

Honorable Joseph J. Farnan, Jr.  
United States District Court  
District of Delaware  
J. Caleb Boggs Federal Building  
844 N. King Street  
Room 4124, Lockbox 27  
Wilmington, Delaware 19801

**RE: Charles A. Stanziale, Jr., Chapter 7 Trustee of Student Finance Corp. v.  
McGladrey & Pullen LLP et al., Case No. 05-72-JJF**

Dear Judge Farnan:

This office represents Charles A. Stanziale, Jr., the Chapter 7 Trustee of Student Finance Corporation (the "Chapter 7 Trustee") and the plaintiff in the above captioned matter. In response to the Court's March 24, 2005 Order requesting the parties in the above action to submit a proposed Rule 16 Scheduling Order by April 15, 2005, we propose that the Court call a joint status for the following actions, all of which involve highly similar and overlapping facts and discovery issues: MBIA Ins. Corp. and Wells Fargo Bank v. Royal, Case No. 02-1294-JJF, Stanziale v. Pepper Hamilton et al., Case No. 0401551-JJF; and Royal v. Pepper Hamilton et al., Case No. 05-165-JJF. The purpose of the joint status conference would be to coordinate and consolidate the discovery schedules in these related cases.

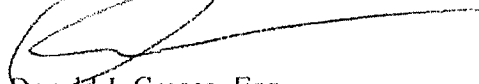
At a March 18, 2005 hearing regarding Royal's motion to amend its counter-claim in the MBIA v. Royal action, 02-1294-JJF, which resulted in the filing of the Royal v. Pepper et al. action, No. 05-165-JJF, the Court noted, referring to all the cases mentioned above, that "we'll look at all the cases and see how we're going to manage them, whether consolidated or in pieces, but we're going to get scheduling orders in place for all of them." March 18, 2005 Tr. at 20-21 (attached hereto). Consistent with the Court's comments on March 18, 2005, we believe it would be in the best interest of all parties involved in these matters if a case management conference was held to facilitate a consolidated case management order addressing discovery in all the above actions. Such an order would benefit all parties in interest through streamlining discovery and avoiding unnecessary and duplicative discovery of witnesses and entities common to some or all of these actions. As such, we respectfully request that your Honor consider

Honorable Joseph J. Farnan, Jr.  
April 14, 2005  
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convening a case management conference in these matters. If your Honor decides otherwise, we will immediately submit a proposed case management order to your Honor for consideration in the Chapter 7 Trustee's action against McGladrey & Pullen, LLP and Michael Aquino, case no. 05-72-JJF.

Thank you for your consideration. By copy of this letter we are notifying all counsel of record of this request.

Respectfully Submitted,



Donald J. Crecca, Esq.  
Jeffrey T. Testa, Esq.

Enclosure(s)

cc: Charles A. Stanziale, Jr., as Chapter 7 Trustee  
John A. Bicks, Esq.  
Veronica R. Rendon, Esq.  
Richard P. Swanson, Esq.  
Stephen J. Shapiro, Esq.  
Dawn M. Jones, Esq.  
Tiffany Geyer, Esq.  
John I. Grossbart, Esq.  
Alan Gilbert, Esq.  
Sheryl Auerbach, Esq.  
Jim Rodgers, Esq.  
Andre G. Castaybert, Esq.  
John W. Shaw, Esq.  
Joseph H. Huston, Esq.  
David Pittinsky, Esq.  
Kevin R. Shannon, Esq.  
Neil Epstein, Esq.  
Karen Turner, Esq.  
Bruce Haines, Esq.

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

MBIA INSURANCE CORP., et al., )  
 )  
Plaintiffs, )  
 ) Civil Action  
v. ) No. 02-1294 (JJF)  
 )  
ROYAL INDEMNITY CO., )  
 )  
Defendant. )

RECEIVED BY HAND

MAR 23 2005

A&G

Wilmington, Delaware  
Friday, March 18, 2005  
10:35 a.m.  
Emergency Motion

BEFORE: HONORABLE JOSEPH J. FARNAN, JR.

APPEARANCES:

DAWN M. JONES, ESQ.,  
YOUNG, CONAWAY, STARGATT & TAYLOR  
Counsel for Plaintiff

TIFFANY GEYER LYDON, ESQ.  
ASHBY & GEDDES  
and

JOHN I. GROSSBART, ESQ.  
SONNENSCHNEIN, NATH & ROSENTHAL  
Counsel for Defendant

VERONICA E. RENDON, ESQ.  
RICHARD P. SWANSON, ESQ.  
THELEN, REID & PRIEST, LLP  
Counsel for McGladrey, Pullen  
and Michael Aquino

STEPHEN J. SHAPIRO, ESQ.  
SCHNADER HARRISON SEGAL & LEWIS  
Counsel for Pepper Hamilton

1 THE COURT: All right. Be seated,  
2 please. Good morning.

3 Okay. We have this application  
4 with regard to Royal Indemnity.

5 MS. LYDON: Good morning, Your  
6 Honor. Tiffany Lydon on behalf of Royal  
7 Indemnity of Ashby & Geddes. I have with me  
8 co-counsel John Grossbart from Sonnenschein. He  
9 will be speaking today. He's admitted pro hac.

10 THE COURT: Thank you. Good  
11 morning.

12 MR. GROSSBART: Good morning, Your  
13 Honor. Thank you for granting my pro hac and  
14 it's a pleasure to be here. It's a fairly  
15 simple motion. We are seeking to amend the  
16 existing counterclaim to the third-party  
17 complaint to not only add some additional  
18 factual information against the original parties  
19 to that pleading, but also to add some new  
20 parties.

21 Pepper Hamilton, one of its  
22 partners, McGladrey and Fried accounting firms  
23 and a Mr. Aquino who is a partner in both.

24 None of the existing parties to

1 the case have objected to the motion. I have  
2 received a letter and a short filing from  
3 McGladrey and Pepper, which do object. None of  
4 the objections are well founded. I don't  
5 believe either party has standing to object at  
6 this juncture in any event, but even if they  
7 did, when you look at what they have said in  
8 their pleading and their letter, they have not  
9 offered any reason why under the liberal  
10 pleading standards of Rule 15 the case shouldn't  
11 be amended.

12 This is as to the third-party  
13 action, this case is in its infancy actually.  
14 There has been very little discovery, no  
15 depositions whatsoever, no documents exchanged.  
16 They're not missing anything. They're also not  
17 new to the facts, both the Pepper group and  
18 McGladrey are both already being sued by the  
19 trustee in other actions regarding the FSC  
20 problem, they're aware of what that's all about,  
21 there is no prejudice.

22 Our complaint is very -- our  
23 proposed complaint is very detailed. It  
24 includes everything in the prior pleading and

1 then some. You've already ruled on the prior  
2 pleading that it meets 9(b) requirements, all be  
3 it as to the FSC entities, but I think any even  
4 quick read of the proposed pleading makes it  
5 very clear that there is plenty of name, dates,  
6 places, events, alleged, it's very  
7 particularized, and the Pepper and McGladrey  
8 pieces are set up separately.

9 I don't think there is simply any  
10 basis to oppose the application. I also think  
11 it's obviously in the interest of efficiency and  
12 cost savings, we could sue these entities  
13 separately. We're seeking to avoid doing that,  
14 but because it makes more sense for everything  
15 to be here, but I'll listen to what they have to  
16 say if Your Honor is going to hear these  
17 nonparties and respond, but I think the motion  
18 should be granted.

19 THE COURT: All right. Thank you.

20 MR. WINTER: Good morning, Your  
21 Honor. Chris Winter with Duane Morris. Here  
22 today is Delaware counsel for McGladrey and  
23 Pullen and Michael Aquino.

24 Your Honor, here today with me are

1 Veronica Rendon and Richard Swanson of the  
2 Thelen, Reid firm. Both have been admitted pro  
3 hac before the Court in related matters. To the  
4 extent necessary, I would like to move their  
5 admission pro hac today.

6 THE COURT: All right. It will be  
7 granted.

8 MR. WINTER: Thank you.

9 THE COURT: Thank you. Good  
10 morning.

11 MS. RENDON: Good morning, Your  
12 Honor. Veronica Rendon. As Mr. Winter  
13 indicated, we represent McGladrey and Pullen as  
14 well as Mr. Aquino. And we did submit a brief  
15 objection to the application of Royal for an  
16 amendment. And it's really mostly the process  
17 that we're objecting to.

18 Royal's application requested an  
19 emergency consideration. They filed their  
20 motion for amendment on March 9th out of a  
21 patent concern that the statute of limitations  
22 for their claims against McGladrey and  
23 Mr. Aquino may run on March 20th.

24 And it is our position that this

1 is an entirely self-created emergency in this  
2 sense, Royal has been well aware of the  
3 existence of McGladrey and Pullen and Mr. Aquino  
4 for quite some time, in fact, that their  
5 original answer and counterclaim in this  
6 proceeding, they refer to paragraph 95 to  
7 McGladrey and Pullen and Mr. Aquino, the work  
8 that we did and even alluded to deficiencies in  
9 that work.

10 So clearly Royal was aware of our  
11 work and could have brought a third-party action  
12 against us at any time and chose not to. They  
13 also made that decision back in November and  
14 December of this past year when they sought 2004  
15 discovery working in conjunction with the  
16 Chapter 7 trustee of the Student Finance estate  
17 and they were also very much aware and involved  
18 in the bringing of a claim by the Chapter 7  
19 trustee against McGladrey and Mr. Aquino.

20 In fact, it's our understanding  
21 that they participated in the bringing of that  
22 claim so it's not apparent to us at all why it  
23 was that they waited to March 9th to seek to  
24 amend the pleadings in this action, preventing



1 McGladrey and Pullen and Mr. Aquino from making  
2 a full and fair argument and objection to the  
3 amendment on the grounds of futility and we do  
4 believe the amendment would be futile because  
5 the proposed amended complaint is very much  
6 dismissible.

7 There are statute of limitations  
8 problems that Royal faces. They also have  
9 problems in alleging privity and reliance and  
10 what we're simply asking for is the opportunity  
11 the fully brief that in front of Your Honor  
12 before you make a decision on the motion for  
13 amendment.

14 THE COURT: Okay. Let me see, is  
15 there anybody else that wishes to be heard?

16 What about Pepper Hamilton?

17 MR. SHAPIRO: Good morning, Your  
18 Honor.

19 THE COURT: Good morning.

20 MR. SHAPIRO: Steve Shapiro with  
21 the Schnader Harrison firm. We are counsel for  
22 Pepper Hamilton in the case brought by the  
23 trustee which is currently before Judge Sleet.

24 In the interest of full

1 disclosure, Your Honor, I am not admitted  
2 generally in this district. I am admitted pro  
3 hac before Judge Sleet.

4 THE COURT: All right. That's  
5 fine.

6 MR. SHAPIRO: Our position, Your  
7 Honor, at this point is we do not believe we  
8 have standing to make an argument at this stage  
9 since we are not yet parties to this action.

10 We simply point out that most of  
11 these claims were brought by the trustee in an  
12 action that is funded by Royal that is currently  
13 pending before Judge Sleet. There are many  
14 potential problems here including the risks of  
15 inconsistent rulings between the two courts,  
16 also -- excuse me, automatic stay issues, Your  
17 Honor, we haven't heard from the trustee yet.

18 The trustee is claiming that he  
19 has exclusive standing to bring some of these  
20 claims, yet now Royal is bringing them here and  
21 we assume at some point the trustee will take  
22 action to preserve the claims on behalf of the  
23 estate. And that that is really our position,  
24 Your Honor, is I really cannot be telling you

1 anything at this point, but that's where we  
2 stand.

3 THE COURT: Okay. Thank you.

4 MR. SHAPIRO: Thank you.

5 MR. GROSSBART: Do you wish to  
6 hear a response, Your Honor?

7 THE COURT: Sure.

8 MR. GROSSBART: The proposed  
9 complaint, amended complaint charges McGladrey  
10 and Pepper with fraud, conspiracy, aiding and  
11 abetting. Those are serious allegations. We  
12 take them seriously.

13 We filed when we filed because  
14 based on information that came to light as  
15 recently as the end of the last year, we felt we  
16 were in a position to make a good faith  
17 pleading, do our investigation and so forth.

18 And I find it a little ironic that  
19 we would then be accused of almost like a  
20 latches argument for not coming sooner,  
21 particularly when the proceedings, the discovery  
22 proceedings and the litigation proceedings  
23 haven't really started at all on this  
24 third-party complaint.

1                   So the fact that there has been a  
2                   time lag in and of itself is irrelevant. As for  
3                   things like statute of limitation and privity  
4                   and reliance, I respectfully disagree with  
5                   what's been said, but those are all Rule 12  
6                   arguments and those are not waived.

7                   If McGladrey feels the complaint  
8                   is deficient on those bases, they'll bring a  
9                   motion and I assume Your Honor will rule on it.  
10                  They will have all the time and opportunity in  
11                  the world for full and fair hearing on that.  
12                  They're not waiving that at all and they'll be  
13                  in exactly the same position to make those  
14                  arguments on Rule 12(b).

15                  As for Pepper, I guess I agree  
16                  with Pepper on their lack of standing, but I  
17                  will point out in their motion to dismiss the  
18                  trustee's action one of the arguments they make  
19                  at some length is that Royal should be bringing  
20                  the lawsuit because Royal is the real party in  
21                  interest.

22                  Well, now that we've done so, it's  
23                  a little strange for them to be coming here and  
24                  saying well, maybe this is the trustee's deal.

1 But they're on record as having  
2 already said that Royal is the real party in  
3 interest. In any event, I don't think we've  
4 heard any arguments here that justify our motion  
5 to deny Rule 15.

6 THE COURT: And what is the  
7 discovery that is anticipated by Royal?

8 MR. GROSSBART: Well, assuming the  
9 proposed pleading --

10 THE COURT: Just in the case as it  
11 exist now.

12 MR. GROSSBART: As the case exist  
13 now, the contract aspects, the insurance policy  
14 aspects of this case are on appeal before the  
15 Third Circuit as Your Honor knows, so depending  
16 on what -- if that case -- if that part of the  
17 case is remanded here, that will change things  
18 considerably. Then there will be a triable  
19 issue about what the contracts mean presumably.

20 As for the remainder of the case,  
21 it's really as we stand here today got two basic  
22 pieces, one is a breach of contract piece  
23 against Wells Fargo, a contract independent of  
24 the insurance policies. Royal has alleged and

1 is continuing to allege that Wells Fargo has  
2 certain independent duties pursuant to these  
3 pooling and service agreements. That piece of  
4 the case exist now, it continues to exist, and  
5 we are just beginning to finalize -- excuse me,  
6 we are just completing finalizing  
7 confidentiality orders with the Wells Fargo  
8 attorneys so there will be an exchange of  
9 documents relative to that and that's going to  
10 go forward.

11 We also have the fraud piece  
12 against the FSC entities that existed, that  
13 exist now and will continue to exist and that  
14 piece will now be expanded assuming our motion  
15 is granted to encompass the McGladrey parties  
16 and the Pepper parties who are alleged to be  
17 part of the conspiracy with FSC to misrepresent  
18 FSC's situation in connection with Royal.

19 So that discovery hasn't gotten  
20 off the ground yet and what we anticipate is  
21 obviously a document request, we want to see  
22 McGladrey's work papers, they have resisted in  
23 connection through the proceedings that we're  
24 here last winter and fall, they protested that,

1 we'll seek that now directly in this case, we'll  
2 seek deposition discovery, we'll seek records  
3 from Pepper Hamilton as well. How many  
4 depositions is sort of hard to say. I don't  
5 think it's an enormous number, but it's not  
6 inconsequential, either.

7 THE COURT: All right. Thank you.

8 MS. RENDON: Your Honor, if I may  
9 make a few brief remarks in response?

10 THE COURT: Sure.

11 MS. RENDON: Thank you. And I  
12 will be brief.

13 McGladrey and Pullen and  
14 Mr. Aquino certainly agree that were it Royal's  
15 application to be granted that they would have  
16 12(b)(6) opportunities.

17 I think what we're questioning and  
18 having standing as a party greatly affected us  
19 as to whether or not an amendment is allowed to  
20 Royal to bring us into the case, why it is that  
21 we are proceeding on an emergency basis. There  
22 is a difference in proceeding through a 12(b)(6)  
23 as compared to arguing futility at this time  
24 since arguing futility would occur prior to the

1 amendment as compared to a 12(b)(6) argument  
2 which would occur after the amendment.

3 And, again, one just has to  
4 question why it is that Royal waited as long as  
5 it did to seek to amend, even by Mr. Grossbart's  
6 admission it was as of the end of last year that  
7 they became aware of this new evidence which has  
8 not been articulated what that new evidence is  
9 but became aware of new evidence that made them  
10 believe they had claims against McGladrey, so  
11 one has to question why it is that Royal waited  
12 until March 9th when they were aware of the  
13 statute running on March 20th to seek an  
14 emergency application in front of this Court.

15 And we would simply argue that  
16 Royal should not benefit from its own tardiness  
17 in a self-created emergency and to the extent  
18 that they are going to seek to amend there  
19 should be a full and fair briefing on the issue  
20 before the amending occurring.

21 THE COURT: Let me ask you this  
22 question. Suppose I deny the motion to amend,  
23 despite the fact that the parties truly before  
24 the Court have no objection, there is a case,



1 everybody in that case is okay with the  
2 amendment, but let's say I deny it anyway. Now,  
3 Royal would then file a complaint today, a new  
4 action against your client.

5 MS. RENDON: Uh-huh. Your Honor,  
6 Royal will do what Royal will do.

7 THE COURT: But I'm kind of  
8 thinking that they will probably file a  
9 complaint against you. Now that takes away your  
10 futility argument.

11 MS. RENDON: Well, Your Honor,  
12 what we're asking is not right now for Your  
13 Honor to rule that no amendment should be  
14 allowed, simply what we're asking for is on the  
15 merits consideration as to whether or not the  
16 amendment would be futile prior to the amendment  
17 occurring as compared to a procedural dismissal.

18 THE COURT: I understand what your  
19 thinking is because of the first argument you  
20 would like to raise procedurally, but I'm  
21 looking at bringing some semblance of order to  
22 this case. I mean, we have got part of it on  
23 appeal, so who knows. We have got the  
24 trustees's case over in Judge Sleet's courtroom.

1 We have got this other case here. And now  
2 they're trying to bring your clients and Pepper  
3 Hamilton into this case and, you know, I'm  
4 thinking --

5 MS. RENDON: You also have us in  
6 front of you on the trustee's claim against  
7 McGladrey.

8 THE COURT: Say that again.

9 MS. RENDON: You also, you, Your  
10 Honor, have the trustee's action against  
11 McGladrey and Mr. Aquino in front of you.

12 THE COURT: Right. So I'm looking  
13 at it and there is not any kind of an order to  
14 the case in my view. You know, we decided the  
15 issues with the banks, but that didn't do  
16 anything for the case.

17 MS. RENDON: I guess, Your Honor,  
18 all we're -- I guess what's troubling to us is  
19 that the lack of order that you're alluding to  
20 really could have been prevented by Royal when  
21 they filed their original answer and  
22 counterclaim in this case.

23 THE COURT: Well, could have been  
24 prevented by me, too, if I was smarter when I

1 first got the case assigned, but I wasn't, but  
2 now I'm getting smarter because I'm learning  
3 more about the breath of the case, so I'm going  
4 to take your futility argument away. I'm not  
5 going to give you a chance to put that here.

6 And how I am going to do this is  
7 deny the motion to amend in the case that's  
8 before me, put Royal to a new case with a  
9 complaint which can always be consolidated. I'm  
10 going to talk to Judge Sleet about getting his  
11 case over here. And then I'm going to divide up  
12 or consolidate the cases that will then be in  
13 front of me.

14 So what you will get to engage in  
15 rather than a motion practice on futility of an  
16 amendment which may have no impact on the  
17 overall case at all, you'll get to engage in a  
18 Rule 12 practice with Royal on the substance of  
19 the complaint that will be directed just to your  
20 client.

21 Now, that's not as good as you  
22 would like it to be, but it starts to give me  
23 the ability to manage the case a little bit. So  
24 then we'll see after that Rule 12 practice

1       whether you're in a case or not in a case. And  
2       then we'll see whether your case should be  
3       combined with some other of the myriad of cases  
4       that will be before me then and then we'll try  
5       to get scheduling orders in place for the  
6       pieces, or the one big case that we'll have that  
7       will be consolidated.

8               And you can report to your client  
9       and save them all that money on briefing  
10      futility and we're going right to a 12. Because  
11      in this circuit the chances of me being affirmed  
12      on a futility finding for you, you got a better  
13      chance of both those tables walking out of the  
14      courtroom with you today. It's just not going  
15      to happen.

16             And the whole idea of pushing up  
17      against March 20th, I read that, I agree with  
18      you, Royal says to me although Royal believes  
19      that the limitation with respect to the each of  
20      the new parties named in the amended pleading  
21      will continue to run for some time, it is  
22      possible that the newly added defendants may  
23      seek to avoid the application of discovery  
24      accrual and argue that the limitation period for

1 certain of the claims pled expires on -- I mean,  
2 if you read that three or four times, and you're  
3 a trial judge, you got to take medication.  
4 Because what it's saying is nothing. So I got  
5 to get this case in order.

6 So I apologize for not giving you  
7 a chance to brief through futility. You're  
8 going to be a defendant in a separate action it  
9 sounds like, maybe you won't be, maybe they'll  
10 decide not to bring a separate action, and then  
11 what I want to do is once your clients are  
12 served, I want to get you on the phone to put a  
13 scheduling order in place for the motion that I  
14 think you'll file rather than answer.

15 MS. RENDON: That's correct, Your  
16 Honor, I think we will do that. And all I would  
17 simply add to what you've laid out is the hope  
18 certainly by our parties that we would, in fact,  
19 end up in front of you simply because of the  
20 long history you do have in this case.

21 THE COURT: Oh, yes, when the  
22 complaint is filed, I'm going to -- you should  
23 put it to a related case, particularly after  
24 this pleading to amend this case, but I'm going

1 to put in that we have a thing for assignment  
2 appropriate to this judge.

3 MR. GROSSBART: Your Honor, I was  
4 going to ask you exactly what you would like us  
5 to do in that regard. And you have answered  
6 that question. We are going to file a separate  
7 case and the motion was brought here principally  
8 to -- because we knew we could always bring a  
9 separate case, but principally to get you  
10 involved earlier rather than later in terms of  
11 how you want to manage the courtroom in the  
12 case, so that's all fine.

13 THE COURT: So I'll deny this  
14 motion, you'll file your complaint, you'll get  
15 served, on the papers that you file you'll say  
16 it's a related case to my case, don't include  
17 Judge Sleet's case, I'll talk with him this  
18 afternoon and I'm sure he'll be very  
19 disappointed to lose that trustee case, but  
20 we'll get him to bring that over to me and then  
21 the first thing we'll attend to will be your  
22 motion under Rule 12.

23 And then once that's resolved,  
24 then we'll look at all the cases and see how

1 we're going to manage them, whether consolidated  
2 or in pieces, but we're going to get scheduling  
3 orders in place for all of them.

4 I'm not going to rush it, it's not  
5 about rushing, it's about having some semblance  
6 of order. And then we'll actually anticipate  
7 without any prediction the dropping back of the  
8 bank cases.

9 So I'm going to give some firm  
10 trial dates, but they'll be out far enough that  
11 if those cases are dropped back in here, they  
12 won't blow up the work that you've done. There  
13 will be an ability to mesh them so that we can  
14 go forward.

15 MS. RENDON: Thank you, Your  
16 Honor.

17 THE COURT: And I'll ask you to  
18 remind me of that when we're talking about the  
19 scheduling.

20 MS. RENDON: Thank you.

21 THE COURT: Okay. Anything else  
22 we should talk about on behalf of Royal?

23 MR. GROSSBART: No, not on our  
24 part.

1 MS. RENDON: No, Your Honor.

2 Thank you.

3 THE COURT: Okay. And Pepper  
4 Hamilton, you don't have any standing so you're  
5 out of this. You got your stay.

6 Thank you very much. We'll be in  
7 recess.

8 (Court recessed at 10:55 a.m.)

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1 State of Delaware )  
2 New Castle County )

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4  
5 CERTIFICATE OF REPORTER

6 I, Dale C. Hawkins, Registered Merit  
7 Reporter and Notary Public, do hereby certify that  
8 the foregoing record inclusive, is a true and  
9 accurate transcript of my stenographic notes taken on  
10 March 18th, 2005, in the above-captioned matter.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand and seal this 22nd day of March, 2005, at  
13 Wilmington.

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Dale C. Hawkins, RMR